

Wage and Hour Division, Labor

§ 575.1

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AUTHORITY: Secs. 11, 12, 13, 18, 52 Stat. 1067, 1069, as amended; 29 U.S.C. 211, 212, 213, 218; Secretary of Labor's Order No. 16-75, 40 FR 55913; Employment Standards Order No. 2-75, 40 FR 56743.

SOURCE: 43 FR 26562, June 21, 1978, unless otherwise noted.

§ 575.1 Purpose and scope.

(a) Section 13(c)(4) was added to the Fair Labor Standards Act of 1938, as amended, by the Fair Labor Standards Amendments of 1977. This section provides that:

(A) An employer or group of employers may apply to the Secretary for a waiver of the application of section 12 to the employment for not more than 8 weeks in any calendar year of individuals who are less than 12 years of age, but not less than 10 years of age, as hand harvest laborers in an agricultural operation which has been, and is customarily and generally recognized as being, paid on a piece rate basis in the region in which such individuals would be employed. The Secretary may not grant such a waiver unless he finds, based on objective data submitted by the applicant, that:

(i) The crop to be harvested is one with a particularly short harvesting season and the application of section 12 would cause severe economic disruption in the industry of the employer or group of employers applying for the waiver;

(ii) The employment of the individuals to whom the waiver would apply would not be deleterious to their health or well-being;

(iii) The level and type of pesticides and other chemicals used would not have an adverse effect on the health or well-being of the individuals to whom the waiver would apply;

(iv) Individuals age 12 and above are not available for such employment; and

(v) The industry of such employer or group of employers has traditionally and substantially employed individuals under 12 years of age without displacing substantial job opportunities for individuals over 16 years of age.

(B) Any waiver granted by the Secretary under subparagraph (A) shall require that:

(i) The individuals employed under such waiver be employed outside of school hours for the school district where they are living while so employed;

(ii) Such individuals while so employed commute daily from their permanent residence to the farm on which they are so employed; and

(iii) Such individuals be employed under such waiver (I) for not more than 8 weeks between June 1 and October 15 of any calendar year, and (II) in accordance with such other terms and conditions as the Secretary shall prescribe for such individuals' protection.

(b) The child labor provisions of the Fair Labor Standards Act, section 12, require the following age standards for employment in agriculture:

(1) 16 years of age in any occupation at any time;

(2) 14 and 15 years of age outside of school hours except in occupations found and declared by the Secretary to be particularly hazardous for the employment of minors under 16 years of age (subpart E-1, 29 CFR 570.70, *et seq.*);

(3) 12 and 13 years of age in nonhazardous occupations outside of school hours if:

(i) Such employment is with the written consent of a parent or person standing in the place of a parent of such minor, or

(ii) Such employment is on the same farm where such parent or person is also employed;

(4) Under 12 years of age in nonhazardous occupations outside of school hours if such employment is with the written consent of a parent or person standing in place of a parent of such minor, on a farm where, because of the provisions of section 13(a)(6)(A) of the Act, none of the employees are required to be paid at the wage rate prescribed by section 6(a)(5) of the Act;

(5) 10 and 11 years of age in nonhazardous occupations outside of school hours employed to hand-harvest short season crop or crops under a waiver issued pursuant to section 13(c)(4) of the Act and this part:

(6) Minors of any age may be employed by their parents or persons standing in place of their parents at any time in any occupation on a farm owned or operated by their parents or persons standing in place of their parents.

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(c) This part provides the procedures to be used under section 13(c)(4) of the Act. This part describes the information and defines the supporting data that the employer or group of employers must submit when applying for a waiver of the child labor provisions for the employment of 10 and 11 year old minors as hand-harvest laborers in an agricultural operation. It further explains the specific requirements imposed by the statute for employment under a waiver and specifies the conditions prescribed by the Secretary for employment under a waiver.

§ 575.2 Definitions.

As used in this part:

Act means the Fair Labor Standards Act of 1938, as amended (52 Stat. 1060, as amended; 29 U.S.C. 201, *et seq.*).

Administrator means the Administrator of the Wage and Hour Division, Employment Standards Administration, U.S. Department of Labor, and includes an authorized representative designated by the Administrator to perform any of the functions of the Administrator under this part.

Agriculture means agriculture as defined in section 3(f) of the Act and as interpreted in part 780 of this chapter.

Commute daily means the minors shall travel by foot, car, or other vehicle designed for transporting passengers from their permanent residences to the field or farm where they will work and return thereto at the end of each workday.

Department means the U.S. Department of Labor.

Employer means employer as defined in section 3(d) of the Act.

Group of employers means a number of employers who seek to be considered together for the purpose of applying for a waiver under section 13(c)(4) of the Act.

Hand-harvest laborers means agricultural workers engaged solely in harvesting by hand soil grown crops such as but not limited to berries, potatoes, and beans, and as interpreted in § 780.312 of this chapter.

Outside school hours means such periods as determined by the school district of the minor's permanent residence. These periods include before or after school hours, holidays, summer

vacation, Saturdays, Sundays, or any other days on which the school for the school district does not assemble.

Permanent residence means the place where the minor and the minor's parent or person standing in place of a parent reside year-round.

Secretary means the Secretary of Labor, United States Department of Labor, or an authorized representative of the Secretary.

Waiver means a letter signed by the Administrator advising the named employer or group of employers that 10 and 11 year old minors may be employed in the hand-harvesting of the specified short season crop or crops for the period designated, in accordance with the terms and conditions set forth in section 13(c)(4) of the Act and this part.

[43 FR 26562, June 21, 1978; 43 FR 28471, June 30, 1978]

§ 575.3 Application for waiver.

(a) An application for a waiver shall be filed with the Administrator of the Wage and Hour Division, Employment Standards Administration, United States Department of Labor, Washington, DC 20210. To permit adequate time for processing, it is recommended that such applications be filed 6 weeks prior to the period the waiver is to be in effect.

(b) No particular form is prescribed. The application, which may be in letter form, shall be typewritten or clearly written and shall include the following information:

(1) The general information as described in § 575.4 of this part:

(i) Name and address of employer or group of employers;

(ii) Telephone number;

(iii) Location of farm(s);

(iv) Crop or crops to be hand harvested;

(v) Whether payment is customarily paid on a piece rate basis;

(vi) Requested period of waiver;

(vii) Statement that such employment shall be outside school hours;

(2) The objective data as required in § 575.5 of this part to show that:

(i) The crops have a short harvesting season;